



# Crimes Legislation Amendment Act 1992

No. 164 of 1992

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**An Act to amend certain Acts in relation to criminal or law enforcement matters, and for related purposes**

*[Assented to 11 December 1992]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Crimes Legislation Amendment Act 1992*.

### **Commencement**

2.(1) Part 1 and Parts 3 to 11 commence 28 days after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), sections 3 to 17 commence on a day or days to be fixed by Proclamation.

(3) If any of sections 3 to 17 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that section commences on the first day after the end of that period.

## **PART 2—AMENDMENT OF THE CASH TRANSACTION REPORTS ACT 1988**

### **Principal Act**

3. In this Part, “**Principal Act**” means the *Cash Transaction Reports Act 1988*<sup>1</sup>.

### **Interpretation**

4. Section 3 of the Principal Act is amended:

- (a) by omitting “, (5A)” from the definition of “FTR information” in subsection (1);
- (b) by omitting from subsection (1) the definitions of “account” and “primary identification document” and substituting the following definitions:

“ ‘**account**’ means any facility or arrangement by which a cash dealer does any of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the cash dealer by, or collects cheques or payment orders on behalf of, a person other than the cash dealer;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit, but does not include an arrangement for a loan that sets out the amounts and times of advances and repayments, being amounts and times from which the borrower and lender may not depart during the term of the loan;

‘**primary identification document**’, in relation to a person, in a particular name, means:

- (a) a certified copy, or an extract, of a birth certificate of the person; or
- (b) a certified copy of a citizenship certificate of the person; or
- (c) an international travel document for the person; or
- (d) any other prescribed document;

that shows that name as the person’s name;”;

- (c) by inserting in subsection (1) the following definitions:

“ ‘**account information**’, in relation to an account with a cash dealer, means:

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- (a) information identifying the account, including any identifying number; and
- (b) the name in which the account is held; and
- (c) information, and documents, provided to the cash dealer by the holder of the account (whether provided in relation to that account or another account), as follows:
  - (i) an address, not being a Post Office Box address, for the holder of the account;
  - (ii) if the account is held in:
    - (A) the name or names of an individual or individuals; or
    - (B) the name of an unincorporated association—that fact;
  - (iii) if the account is held in the name of a body corporate (other than as a trustee)—that fact and a copy of the certificate of incorporation (if any) of the body corporate;
  - (iv) if the account is held in a business name—that fact and a copy of the certificate of registration of the business name or, if registration was applied for but not yet obtained, a copy of the application;
  - (v) if the account is held in trust—that fact and the prescribed details of the trustees and beneficiaries of the trust;

**'identification record'** has the meaning given by section 20A;

**'identification reference'** has the meaning given by section 21;

**'international travel document'** means:

- (a) a current passport; or
- (b) an expired passport that:
  - (i) was not cancelled; and
  - (ii) was current within the preceding 2 years; or
- (c) another current identity document, having the characteristics of a passport, issued by a government, the United Nations or an Agency of the United Nations for the purposes of international travel;

**'signatory information'**, in relation to a signatory to an account with a cash dealer, means information and documents (whether obtained by the cash dealer in relation to that account or another account), as follows:

- (a) the name used by the signatory as his or her name in relation to that account;
- (b) if the account is held in the name of an unincorporated association—a copy of the instrument authorising the signatory to sign;

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- (c) any other name by which the signatory is commonly known, being a name disclosed to the cash dealer;
- (d) an identification record for the signatory in accordance with section 20A;”.

**Reports of significant cash transactions**

5. Section 7 of the Principal Act is amended by inserting in subsection (2) “or otherwise authenticated by the cash dealer in a way approved by the Director” after “signed by the cash dealer”.

**Identifying cash dealers**

6. Section 8A of the Principal Act is amended by omitting from paragraph (2)(a) “subsection 20(8)” and substituting “paragraph 20A(1)(b)”.

**Inspection of record systems etc.**

7. Section 14A of the Principal Act is amended by omitting paragraph (4)(b) and substituting the following paragraph:

“(b) for the purposes of monitoring the cash dealer’s compliance with section 20 and with any undertaking given under section 8A, inspect:

- (i) any records of account information or signatory information, being records kept on, or accessible from the premises; and
- (ii) any system used by the dealer at those premises for keeping such records.”.

8. After section 17G of the Principal Act the following Division is inserted in Part II:

***“Division 4—Information provided under other law***

**Information provided under other law**

“17H. For the purposes of this Act, information received by AUSTRAC under another Act or under a law of a State or a Territory is taken to be obtained under this Part.”.

**Opening etc. of account with a cash dealer**

9. Section 18 of the Principal Act is amended:

- (a) by omitting subsections (2), (2A) and (2B) and substituting the following subsections:

“(2) If, at the end of the infringement day, the cash dealer does not have the account information about the account, the account is blocked with respect to each signatory until the cash dealer has the information or the Director gives a notice under subsection 19(2).

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Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

“(2A) If, at the end of the infringement day, the cash dealer does not have the signatory information about the person (**‘unverified signatory’**), the account is blocked with respect to that signatory until the cash dealer has that information or the Director gives a notice under subsection 19(2).”;

Note: a cash dealer is not required to obtain any information that has already been obtained in relation to another account.

- (b) by omitting from subsection (3) “a verification statement from the unverified signatory” and substituting “the account information and the signatory information”;
- (c) by omitting subsections (4), (5) and (5A) and substituting the following subsections:

“(4) If:

- (a) a signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2); or
- (b) the unverified signatory, knowing that the account is blocked, makes a withdrawal from the account at any time when the account is blocked under subsection (2A);

the signatory commits an offence against this subsection.

“(4A) If:

- (a) a signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2); or
- (b) the unverified signatory makes a withdrawal from the account at any time when the account is blocked under subsection (2A);

the cash dealer commits an offence against this subsection.

“(5) If an account becomes blocked under subsection (2) or (2A), the cash dealer commits an offence against this subsection at the end of the period prescribed for the purposes of this subsection unless it has given the Director a written notice stating:

- (a) the reasons why the account became blocked; and
  - (b) sufficient details of the account for the account to be identified; and
  - (c) if the account became blocked because of subsection (2A)—the name of the unverified signatory.”;
- (d) by omitting from subsection (6) “or (4)” and substituting “, (4) or (4A)”;
  - (e) by omitting subsection (7) and substituting the following subsection:

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“(7) If:

- (a) the cash dealer gives the Director a notice under subsection (5); and
- (b) as a result of the cash dealer’s obtaining account information or signatory information, the account ceases to be blocked with respect to a signatory with respect to whom it had been blocked;

the cash dealer must, within 14 days of obtaining the information, give the Director written notice that the account has become unblocked to that extent and for that reason.”;

- (f) by omitting from subsection (9) “(5A)”;
- (g) by omitting from paragraph (10)(b) “or”;
- (h) by omitting paragraphs (10)(c) and (d).

**Unblocking or forfeiture of account**

10. Section 19 of the Principal Act is amended by omitting paragraphs (2)(b) and (c) and substituting the following word and paragraphs:

- “; or (b) the cash dealer has the account and signatory information and the account should not, as a result, be blocked; or
- (c) if the account was blocked only because of subsection 18(2A)—the unverified signatory has ceased to be a signatory of the account;”.

11. Section 20 of the Principal Act is repealed and the following sections are substituted:

**Cash dealers to hold information**

“20.(1) A cash dealer must maintain, in relation to each account, in a way that can be audited:

- (a) any account information obtained by the cash dealer; and
- (b) any signatory information obtained by the cash dealer in relation to each signatory to the account;

(whether or not subsection 18(1) has applied to the account).

“(2) Subsection (1) does not apply to information obtained by the cash dealer before the commencement of Part 2 of the *Crimes Legislation Amendment Act 1992*.

**Identification record**

“20A.(1) For the purposes of this Act, a cash dealer has an identification record for a signatory to an account if, and only if:

- (a) the cash dealer has an identification reference for the signatory (whether or not the reference was obtained in connection with that account); or
- (b) the cash dealer is an identifying cash dealer and:

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- (i) the cash dealer has carried out, and has a record of, the prescribed verification procedure to identify the signatory; or
- (ii) the cash dealer has carried out, and has a record of, a verification procedure to identify the signatory, being a procedure approved by the Director for the cash dealer; (whether or not the verification procedure was carried out in connection with that account).

“(2) A verification procedure that was prescribed for the purposes of subsection 20(8) before the commencement of this section is taken to have been prescribed for the purposes of subparagraph (1)(b)(i).”

12. After section 21 of the Principal Act, the following section is inserted:

**Change of name**

“21A.(1) This section applies to an individual (**‘signatory’**) who wishes to open, or become a signatory to, an account with an identifying cash dealer in a name by which the signatory intends to be commonly known (**‘new name’**), being a name:

- (a) which the signatory has adopted by marriage; or
- (b) by which the signatory, being a woman who has previously changed the surname by which she is known to that of her spouse or de facto spouse, was formerly known; or
- (c) which the signatory, being a person who has been the victim of violence or threats of violence, or the dependent child of such a person, has adopted or intends to adopt to ensure his or her personal safety; or
- (d) if the signatory is an Aborigine or Torres Strait Islander— which is a traditional name of the signatory.

“(2) If the signatory gives to the identifying cash dealer change of name statements signed by the signatory and by a prescribed person:

- (a) the new name is taken to be a name by which the signatory is commonly known; and
- (b) the statements are taken to constitute an identification reference for the signatory in the new name.

“(3) A person must not, knowingly or recklessly:

- (a) make a statement in a change of name statement that is false or misleading in a material particular; or
- (b) omit from a change of name statement any matter or thing without which the change of name statement is misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 4 years, or both.

“(4) For the purposes of this section:

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**'change of name statement'**, in relation to a signatory, means a statement that:

- (a) sets out the name or names by which the signatory has been commonly known; and
- (b) states which paragraph of subsection (1) applies to the signatory; and
- (c) sets out the reasons why this section applies to the signatory; and
- (d) sets out the new name; and
- (e) states that the new name is one by which the signatory will be commonly known.”.

**Notice to Director if no primary identification document examined**

**13.** Section 22 of the Principal Act is amended by omitting all the words in subsection (1) from “Where” to “written notice:” (inclusive) and substituting:

“If an identification reference for a signatory to an account is given to a cash dealer and the reference states that the referee examined only a secondary identification document for the signatory, the cash dealer must give the Director written notice:”.

**Cash dealer to keep documents**

**14.** Section 23 of the Principal Act is amended:

- (a) by omitting subsections (1), (1A) and (2) and substituting the following subsection:

“(1) If a cash dealer makes or obtains a record of any information in the course of obtaining account information or signatory information, the cash dealer must retain the record or a copy of it for 7 years after the day on which the relevant account is closed.”;

- (b) by omitting from subsection (3) “, (1A) or (2)”; and
- (c) by omitting subsections (4) and (4A) and substituting the following subsection:

“(4) If any information is part of the account information or signatory information of more than one account with the cash dealer, subsection (1) applies as if the reference to the day on which the account is closed were a reference to the day on which the last of those accounts is closed.”;

- (d) by omitting from subsection (5) “, (1A) or (2)”; and
- (e) by omitting from subsection (6) “Subsections (1), (1A) and (2) do” and substituting “Subsection (1) does”; and
- (f) by omitting from subsection (7) “, (1A) or (2)”.



**False or misleading information**

15. Section 29 of the Principal Act is amended by omitting from paragraph (4)(aa) “subsection 20(8)” and substituting “paragraph 20A(1)(b)”.

**Functions of Director**

16. Section 38 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(a) “or another Act” after “this Act”;
- (b) by inserting after paragraph (1)(a) the following paragraph:  
“(ab) to exercise the powers that the Director is permitted to exercise under a law of a State or Territory;”.

**Transitional provision in relation to section 23**

17. If, immediately before the commencement of this Part, a cash dealer was required to keep information under section 23 of the Principal Act in relation to an account that had closed, the cash dealer must keep the information for the period specified in that section.

**PART 3—AMENDMENT OF THE CRIMES ACT 1914**

**Principal Act**

18. In this Part, “**Principal Act**” means the *Crimes Act 1914*.

19. After section 4A of the Principal Act, the following sections are inserted:

**Penalty units**

“4AA.(1) In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears:

‘penalty unit’ means \$100.

“(2) In this section:

‘**Territory Ordinance**’ means an ordinance that:

- (a) was made under an Act providing for the acceptance, administration or government of a Territory other than the Territory of Norfolk Island; and
- (b) has not become an enactment of the Australian Capital Territory;

and includes a regulation made under such an ordinance.

**Conversion of pecuniary penalties expressed in dollar amounts to penalty units**

“4AB.(1) A reference in a law of the Commonwealth or in a Territory Ordinance to a pecuniary penalty of D dollars, where D is a number, is taken to be a reference to a pecuniary penalty of P penalty units, where P is:

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- (a) if  $D \div 100$  is a whole number—that whole number; or
- (b) if  $D \div 100$  is not a whole number—the next highest whole number.

“(2) Subsection (1) does not apply to a reference to the maximum amount of a penalty that is not imposed by a court, or by a service tribunal under the *Defence Force Discipline Act 1982*.

“(3) Subsection (1) does not apply to:

- (a) section 76 of the *Trade Practices Act 1974*; or
- (b) a law that is a national scheme law for the purposes of the *Australian Securities Commission Act 1989*; or
- (c) a provision of a law of the Commonwealth prescribed for the purposes of this subsection.

“(4) In this section:

‘penalty’ includes a fine;

‘Territory Ordinance’ has the same meaning as in section 4AA.”.

**Pecuniary penalties—natural persons and bodies corporate**

20. Section 4B of the Principal Act is amended by omitting from subsection (2) all the words from and including “an amount calculated” to the end and substituting the following:

“the number of penalty units calculated using the formula:

$$\text{Term of Imprisonment} \times 5$$

where:

‘Term of Imprisonment’ is the maximum term of imprisonment, expressed in months, by which the offence is punishable.”.

**Time for commencement of prosecutions**

21. Section 15B of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to subsection (1B), a prosecution of an individual for an offence against any law of the Commonwealth may be commenced as follows:

- (a) if the maximum penalty which may be imposed for the offence in respect of an individual is, or includes, a term of imprisonment of more than 6 months in the case of a first conviction—at any time;
- (b) in any other case—at any time within one year after the commission of the offence.

“(1A) A prosecution of a body corporate for an offence against any law of the Commonwealth may be commenced as follows:

- (a) if the maximum penalty which may be imposed for the offence in respect of a body corporate is, or includes, a fine of more

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than 150 penalty units in the case of a first conviction—at any time;

- (b) in any other case—at any time within one year after the commission of the offence.

“(1B) A prosecution of an individual for an offence arising under section 5, or under another law of the Commonwealth dealing with aiding and abetting, in relation to an offence committed by a body corporate may be commenced as follows:

- (a) if the maximum penalty which may be imposed for the principal offence in respect of a body corporate is, or includes, a fine of more than 150 penalty units in the case of a first conviction—at any time;
- (b) in any other case—at any time within one year after the commission of the offence by the individual.”.

**Form of indictments, informations and summonses**

22. Section 15C of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) At the hearing of any indictment, information or summons, the court may make such amendment in the indictment, information or summons as appears to it to be desirable or to be necessary to enable the real question in dispute to be determined.”.

**Restriction on imposing sentences**

23. Section 17A of the Principal Act is amended by omitting subsections (1A) and (1B).

24. After section 17A of the Principal Act, the following section is inserted:

**Restriction on imposing sentences for certain minor offences**

“17B.(1) If:

- (a) a person is convicted of one or more section 17B offences relating to property, money or both, whose total value is not more than \$2,000; and
- (b) the person has not previously been sentenced to imprisonment for any federal, State or Territory offence;

the court convicting the person is not to pass a sentence of imprisonment for that offence, or for any of those offences, unless the court is satisfied that there are exceptional circumstances that warrant it.

“(2) In calculating the total value for the purposes of paragraph (1)(a), a section 17B offence which the court, with the consent of the person charged, has taken into account in passing sentence on the person for another federal offence (whether a section 17B offence or not) is taken to be an offence of which the person is convicted.

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“(3) In this section:

‘**section 17B offence**’ means an offence against any of sections 29, 29A, 29B, 29C, 29D, 71 and 72 or an offence against a provision of a federal law prescribed for the purposes of this section.”.

25. After section 23A of the Principal Act, the following section is inserted:

**Part does not apply in Antarctic Territories**

“23AA.(1) This Part does not apply within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands.

“(2) If a person is arrested within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands for a Commonwealth offence (including being arrested within the meaning given by subsections 23B(2), (3) and (4)) and is brought, while under arrest, to a State or Territory in which this Part applies, this Part operates in relation to the person as if he or she were lawfully arrested on arrival in the State or Territory.”.

26. After Part III of the Principal Act, the following Part is inserted:

**“PART IV—PIRACY**

**Interpretation**

“51. In this Part:

‘**act of piracy**’ means an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed:

- (a) if the act is done on the high seas or in the coastal sea of Australia—against another ship or aircraft or against persons or property on board another ship or aircraft; or
- (b) if the act is done in a place beyond the jurisdiction of any country—against a ship, aircraft, persons or property;

‘**Australia**’ includes the External Territories;

‘**coastal sea of Australia**’ means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory;

and includes airspace over those seas;

‘**high seas**’ means seas that are beyond the territorial sea of Australia and of any foreign country and includes the airspace over those seas;

‘**offence against this Part**’ includes:

- (a) an offence against a provision of this Part because of section 5;
- and

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- (b) an offence against section 6, 7 or 7A that relates to an offence against a provision of this Part; and
- (c) an offence against subsection 86(1) because of paragraph (a) of that subsection, being an offence that relates to an offence against a provision of this Part;

**‘pirate-controlled ship or aircraft’** means a private ship or aircraft which is under the control of persons that:

- (a) have used, are using or intend to use the ship or aircraft in the commission of acts of piracy; or
- (b) have seized control of the ship or aircraft by an act of piracy;

**‘place beyond the jurisdiction of any country’** means a place, other than the high seas, that is not within the territorial jurisdiction of Australia or of any foreign country;

**‘private ship or aircraft’** means a ship or aircraft that is not being operated for naval, military, customs or law enforcement purposes by Australia or by a foreign country, and includes a ship or aircraft that has been taken over by its crew or passengers;

**‘ship’** means a vessel of any type not permanently attached to the sea-bed, and includes any dynamically supported craft, submersible, or any other floating craft, other than a vessel that has been withdrawn from navigation or is laid up.

### **Piracy**

“52. A person must not perform an act of piracy.

Penalty: Imprisonment for life.

### **Operating a pirate-controlled ship or aircraft**

“53.(1) A person must not voluntarily participate in the operation of a pirate-controlled ship or aircraft knowing that it is such a ship or aircraft.

Penalty: Imprisonment for 15 years.

“(2) This section applies to acts performed on the high seas, in places beyond the jurisdiction of any country or in Australia.

### **Seizure of pirate ships and aircraft etc.**

“54.(1) A member of the Defence Force or a member of the Australian Federal Police may seize:

- (a) a ship or aircraft that he or she reasonably believes to be a pirate-controlled ship or aircraft; or
- (b) a thing on board such a ship or aircraft, being a thing that appears to be connected with the commission of an offence against this Part.

“(2) A seizure may be effected:

- (a) in Australia; or

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- (b) on the high seas; or
- (c) in a place beyond the jurisdiction of any country.

“(3) The Supreme Court of a State or Territory may:

- (a) on the application by the custodian of, or a person with an interest in, a ship, aircraft or thing seized under this section, order that the ship, aircraft or thing be returned to its lawful owner; or

(b) on its own motion, or on application:

(i) if:

(A) a person has been convicted of an offence against this Part; and

(B) the ship, aircraft or thing was used in, or was otherwise involved in the commission of, the offence—

order that the ship, aircraft or thing be forfeited to the Commonwealth; or

(ii) make any order relating to the seizure, detention or disposal of the ship, aircraft or thing.

“(4) An order to return a ship, aircraft or thing may be made subject to conditions, including conditions as to the payment to the Commonwealth of reasonable costs of seizure and detention and conditions as to the giving of security for payment of its value should it be forfeited.

**Written consent of Attorney-General required**

“55.(1) A prosecution for an offence against this Part requires the consent of the Attorney-General.

“(2) Despite subsection (1):

(a) a person may be arrested for an offence referred to in subsection (1), and a warrant for such an arrest may be issued and executed; and

(b) a person may be charged with such an offence; and

(c) a person so charged may be remanded in custody or on bail;

but no further step in the proceedings referred to in subsection (1) is to be taken until the Attorney-General’s consent has been given.

“(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

**Evidence of certain matters**

“56.(1) A certificate by the Minister for Foreign Affairs and Trade, or by an eligible person authorised by that Minister to make such a certificate, stating that:

(a) specified waters were, at a specified time:

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- (i) part of the high seas; or
  - (ii) within the coastal sea of Australia; or
- (b) a specified place was, at a specified time, a place beyond the jurisdiction of any country;

is, for the purposes of any proceedings for an offence against this Part, evidence of the facts stated in the certificate.

“(2) In this section:

‘eligible person’ means a Senior Executive Service Officer in the Department of Foreign Affairs and Trade appointed or employed under the *Public Service Act 1922*.”.

**Defrauding a carrier**

27. Section 85ZF of the Principal Act is amended by inserting “or otherwise” after “apparatus or device”.

**PART 4—AMENDMENT OF THE CRIMES (AVIATION)  
ACT 1991**

**Principal Act**

28. In this Part, “Principal Act” means the *Crimes (Aviation) Act 1991*<sup>3</sup>.

**Release of person remanded in custody**

29. Section 40 of the Principal Act is repealed and the following section is substituted:

“40. If a person remanded in custody under section 39 is still held in that custody on the day 2 months after the date of the first of the orders under section 39 under which the person has been held, the person must be released.”.

**PART 5—AMENDMENT OF THE CRIMES (BIOLOGICAL  
WEAPONS) ACT 1976**

**Principal Act**

30. In this Part, “Principal Act” means the *Crimes (Biological Weapons) Act 1976*<sup>4</sup>.

**Evidence of analyst**

31. Section 12 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) Subject to subsection (4), a certificate signed by an analyst appointed under subsection (1) setting out, in relation to a substance, one or more of the following:

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- (a) when and from whom the substance was received;
- (b) what labels or other means of identifying the substance accompanied it when it was received;
- (c) what container the substance was in when it was received;
- (d) a description of the substance received;
- (e) that he or she has analysed or examined the substance;
- (f) the date on which the analysis or examination was carried out;
- (g) the method used in conducting the analysis or examination;
- (h) the results of the analysis or examination;

is admissible in any proceedings for an offence referred to in section 10 as evidence of the matters in the certificate and the correctness of the results of the analysis or examination.”;

- (b) by adding at the end the following subsection:

“(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

- (a) the prosecutor has been given at least 5 days notice of the person’s intention to require the analyst to be so called; or
- (b) the Court, by order, allows the person to require the analyst to be so called.”.

**PART 6—AMENDMENT OF THE CRIMES (SUPERANNUATION BENEFITS) ACT 1989**

**Principal Act**

**32.** In this Part, “**Principal Act**” means the *Crimes (Superannuation Benefits) Act 1989*<sup>5</sup>.

**Definitions**

**33.** Section 2 of the Principal Act is amended by omitting the definition of “sentence” and substituting the following definition:

“‘sentence’ does not include a sentence that is wholly suspended;”.

**Effect of superannuation orders**

**34.** Section 21 of the Principal Act is amended:

- (a) by inserting in subsection (4) “when the superannuation order takes effect” after “who is an employee”;
- (b) by omitting from paragraph (5)(a) “being charged with an offence” and substituting “the superannuation order takes effect”.



**PART 7—AMENDMENT OF THE CUSTOMS ACT 1901**

**Principal Act**

35. In this Part, “Principal Act” means the *Customs Act 1901*<sup>6</sup>.

**Disposal of forfeited goods**

36. Section 208D of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraphs:

- “(b) in the case of narcotic goods—the directions of the Commissioner of Police or a Deputy Commissioner of Police; or
- (c) in the case of narcotic-related goods other than narcotic goods—in accordance with section 208DA.”.

**Disposal of narcotic-related goods other than narcotic goods**

37. Section 208DA of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) If condemned goods consist of, or include, narcotic-related goods (other than narcotic goods), the Attorney-General, or a prescribed officer authorised by the Attorney-General for the purposes of this section, may, at any time before the condemned goods are sold or otherwise disposed of under subsection (2), direct that those narcotic-related goods be disposed of, or otherwise dealt with, as specified in the direction.”.

**Official Trustee to discharge pecuniary penalty**

38. Section 243G of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “the Official Trustee has custody and control of property under” and substituting “property is subject to”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) If:

- (a) the Court has made an order under section 243B that a person pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and
- (b) a restraining order is in force against:
  - (i) property of the person; or
  - (ii) property of another person in relation to which an order under subsection 243CA(2) is in force;

the Court may, on application by the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.”;

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- (c) by omitting from subsection (3) “or (2)” and substituting “, (2) or (2A)”;
- (d) by omitting from paragraph (3)(a) “under the control of the Official Trustee” and substituting “subject to the restraining order”;
- (e) by omitting from subsection (5) “or (2)” and substituting “, (2) or (2A)”;
- (f) by omitting from paragraph (5)(b) “shall not”;
- (g) by omitting from subsection (6) “or (2)” and substituting “, (2) or (2A)”.

**PART 8—AMENDMENT OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983**

**Principal Act**

39. In this Part, “**Principal Act**” means the *Director of Public Prosecutions Act 1983*.

**Powers of Director**

40. Section 9 of the Principal Act is amended:

- (a) by inserting in paragraph (6A)(a) “the imposition of or” before “the recovery of”;
- (b) by omitting paragraph (6A)(d) and substituting the following paragraph:
  - “(d) proceedings under, connected with or arising out of the *Proceeds of Crime Act 1987*, Division 3 of Part XIII of the *Customs Act 1901* or the forfeiture of goods under the *Customs Act 1901*.”.

**Appearances by and on behalf of Director**

41. Section 15 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(d) the following paragraph:
  - “(da) by a member of the staff of a State or Territory authority who is a legal practitioner.”;
- (b) by inserting in subsection (3) the following definition:
  - “‘**State or Territory authority**’ means the agency of a State or Territory Government that is responsible for commencing and carrying on prosecutions on indictment for breaches of State or Territory law.”.

**Delegation by Director**

42. Section 31 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The Director may, by writing signed by him, delegate to a person who:

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- (a) is a member of the staff of the Office; and
- (b) is a Senior Executive Service Officer appointed or employed under the Public Service Act; and
- (c) is a legal practitioner;

the power conferred on the Director by one or more instruments made under subsection 6(4).”.

43. After section 33 of the Principal Act, the following section is inserted:

**Service of process on the Director**

“33A. If a process is addressed to the Director and personal service would be effective, then service within the State or Territory in which the process was issued or filed, on the following persons, in person, is also effective:

- (a) a member of the staff of the Office who is a legal practitioner;
- (b) if an arrangement has been made under section 32 with respect to that State or Territory—an officer of the Attorney-General’s Department who is a person referred to in subparagraph 32(1)(b)(ii) and is a legal practitioner.”.

**PART 9—AMENDMENT OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987**

**Principal Act**

44. In this Part, “**Principal Act**” means the *Mutual Assistance in Criminal Matters Act 1987*<sup>8</sup>.

**Interpretation**

45. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘**Money-Laundering Convention**’ means the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990;”.

46. After section 43 of the Principal Act the following section is inserted:

**Admissibility of certain documents—requests under the Money-Laundering Convention**

“43A.(1) In any proceeding arising directly or indirectly from a request made by a foreign country for international assistance in a criminal matter (including a proceeding under the Proceeds of Crime Act), a document is admissible in evidence if the Attorney-General provides a certificate stating that the document was provided by a specified Party to the Money-Laundering Convention, in connection with a request for assistance of the type covered by the Convention.

“(2) The regulations may specify the Parties to the Money-Laundering Convention for the purposes of paragraph (1)(b).”.

## **PART 10—AMENDMENT OF THE PROCEEDS OF CRIME ACT 1987**

### **Principal Act**

**47.** In this Part, “**Principal Act**” means the *Proceeds of Crime Act 1987*.”.

### **Interpretation**

**48.** Section 4 of the Principal Act is amended by omitting subparagraph (b)(ii) of the definition of “proceeds of crime” in subsection (1).

### **Effects of forfeiture order**

**49.** Section 20 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If a forfeiture order has been made against registrable property:

- (a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and
- (b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (3)(a).”.

### **Forfeiture of all restrained property if person convicted of serious offence**

**50.** Section 30 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) If registrable property has been forfeited to the Commonwealth because of subsection (1):

- (a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and
- (b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (4)(a).”.

### **Official Trustee to discharge pecuniary penalty**

**51.** Section 49 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “the Official Trustee has custody and control of property under” and substituting “property is subject to”;

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- (b) by adding at the end of paragraph (2)(a) “and”;
- (c) by omitting from paragraph (2)(b) “and”;
- (d) by omitting paragraph (2)(c);
- (e) by inserting after subsection (2) the following subsection:
  - “(2A) If:
    - (a) a pecuniary penalty order has been made against a person (“**the defendant**”) in reliance on the defendant’s conviction of an offence; and
    - (b) a restraining order is in force against:
      - (i) property of the defendant; or
      - (ii) property of another person in relation to which an order under subsection 28(3) is in force;the Court may, on application by the DPP, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.”;
- (f) by omitting from subsection (3) “or (2)” and substituting “, (2) or (2A)”;
- (g) by omitting from paragraph (3)(a) “under the control of the Official Trustee” and substituting “subject to the restraining order”;
- (h) by omitting from subsection (5) “or (2)” and substituting “, (2) or (2A)”;
- (i) by omitting from paragraph (5)(b) “shall not”;
- (j) by omitting from subsection (6) “or (2)” and substituting “, (2) or (2A)”.

## **PART 11—REPEALS AND AMENDMENTS OF OTHER ACTS**

### **Minor and consequential amendments**

**52.** The Acts specified in Schedule 1 are amended as set out in that Schedule.

### **Repeal of certain Acts relating to piracy**

**53.** The Imperial Acts specified in the Table in Schedule 2 are repealed to the extent set out in the Table so far as they are part of the law of the Commonwealth or of a Territory.

**SCHEDULE 1**

Section 52

**MINOR AND CONSEQUENTIAL AMENDMENTS**

***Australian Federal Police Act 1979***

**Before paragraph 12L(a):**

Insert:

“(aa) for the purposes of those provisions of that Act, a prescribed offence were a class 1 general offence or a class 2 general offence; and”.

**Section 34A:**

Add at the end:

“(2) Subsection (1) does not prevent a person from being promoted while on maternity leave.”.

**Paragraph 43(1)(a):**

Insert “or a staff member” after “member”.

**Paragraph 44(a):**

Insert “or a staff member” after “member”.

**Subsection 61(1):**

- (a) Insert “, staff member or special member” after “member” (first occurring).
- (b) Omit “member” (second occurring), substitute “person”.

**Section 64:**

Add at the end:

“(3) Subsection (1) is not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory.”.

***Commonwealth Places (Application of Laws) Act 1970***

**Subsection 5(2):**

Insert “4AA, 4AB,” after “4A,”.

***Crimes Act 1914***

**Subsection 4B(2A):**

Omit “\$200,000”, substitute “2,000 penalty units”.

**Paragraph 4J(3)(a):**

Omit “\$6,000”, substitute “60 penalty units”.

**SCHEDULE 1—continued**

**Paragraph 4J(3)(b):**

Omit “\$12,000”, substitute “120 penalty units”.

**Subsection 4J(5):**

Omit “\$6,000”, substitute “60 penalty units”.

**Section 19AZA:**

Omit “\$1,000”, substitute “10 penalty units”.

**Subparagraph 20(5)(b)(i):**

Omit “\$30,000”, substitute “300 penalty units”.

**Subparagraph 20(5)(b)(ii):**

Omit “\$6,000”, substitute “60 penalty units”.

**Subparagraph 20A(5)(b)(i):**

Omit “\$1,000”, substitute “10 penalty units”.

**Paragraph 20AC(6)(a):**

Omit “\$1,000”, substitute “10 penalty units”.

**Paragraph 20BX(1)(a):**

Omit “\$1,000”, substitute “10 penalty units”.

**Section 29D:**

Omit “\$100,000”, substitute “1,000 penalty units”.

**Section 76:**

Add at the end:

“(3) Subsection (1) is not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory in a case where the officer referred to in paragraph (1)(a), or the person referred to in paragraph (1)(b), is a member of the Australian Federal Police.”.

**Subsection 85V(2):**

Omit “\$3,000”, substitute “30 penalty units”.

**Section 85ZH:**

Omit “\$12,000”, substitute “120 penalty units”.

**Section 86A:**

Omit “\$200,000”, substitute “2,000 penalty units”.

**Subsection 89(1):**

Omit “\$1,000”, substitute “10 penalty units”.

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**SCHEDULE 1—continued**

**Subsection 89(2):**

Omit “\$1,000”, substitute “10 penalty units”.

**Section 90:**

Omit “\$100”, substitute “1 penalty unit”.

*Proceeds of Crime Act 1987*

**Subsection 48(6B):**

Omit “(1)(f)”, substitute “(1)(da)”.

**Subsection 53(1):**

Omit “or (2)”, substitute “, (2) or (2A)”.

**Subsection 53(2):**

Omit “or (2)”, substitute “, (2) or (2A)”.

**Paragraph 60(c):**

Omit “or (2)”, substitute “, (2) or (2A)”.

*Public Order (Protection of Persons and Property) Act 1971*

**After subsection 11(3):**

Insert:

“(3A) This section is not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory.”.

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**SCHEDULE 2**

**REPEAL OF CERTAIN ACTS RELATING TO PIRACY**

**TABLE OF ACTS TO BE REPEALED**

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<b>Reign and chapter</b>	<b>Citation or description</b>	<b>Extent of repeal</b>
22 & 23 Charles II, ch 11	Piracy Act 1670	The whole
11 William III, ch 7	Suppression of Piracy Act 1698	The whole except s. 8
8 George, I, ch 24	Piracy Act 1721	The whole
18 George II, ch 30	Piracy Act 1744	The whole
46 George III, ch 54	Offences at Sea Act 1806	The whole
57 George III, ch 53	Murders Abroad Act 1817	The whole
7 William IV & 1 Victoria, ch 88	Piracy Act 1837	The whole
12 and 13 Victoria, ch 96	Admiralty Offences (Colonial) Act 1849	The whole
13 & 14 Victoria, ch 26	Piracy Act 1850	The whole

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**NOTES**

1. No. 64, 1988, as amended. For previous amendments, see Nos. 4 and 110, 1990; and Nos. 28, 122, 123 and 188, 1991.
2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; and Nos. 28, 59, 99 (as amended by No. 145, 1991), 120, 123 and 140, 1991.
3. No. 139, 1991.
4. No. 11, 1977, as amended. For previous amendments, see No. 155, 1979; and No. 70, 1980.
5. No. 145, 1989, as amended. For previous amendments, see No. 153, 1989; No. 123, 1991; and No. 94, 1992.

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**NOTES—continued**

6. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 9, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; Nos. 23, 24, 78, 108 and 174, 1989; and Nos. 6, 11, 37, 70, 79 and 111, 1990; Nos. 28, 82, 120 and 123, 1991; and Nos. 34, 89 and 104, 1992.
7. No. 113, 1983, as amended. For previous amendments, see Nos. 10 and 165, 1984; Nos. 64 and 166, 1985; No. 88, 1986; Nos. 86 and 141, 1987; Nos. 5 and 120, 1988; No. 108, 1989; Nos. 28 and 122, 1991; and No. 94, 1992.
8. No. 85, 1987, as amended. For previous amendments, see Nos. 66 and 120, 1988; and Nos. 123 and 188, 1991.
9. No. 87, 1987, as amended. For previous amendments, see No. 120, 1987; No. 120, 1988; and Nos. 28, 120 and 123, 1991.

*[Minister's second reading speech made in—  
Senate on 16 September 1992  
House of Representatives on 12 November 1992]*